

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/05/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000040

FILED: _____

STATE OF ARIZONA

F TYLER RICH

v.

JOSE CHAVIRA

JAMES P HERNANDEZ

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. 8963492; 8963493; 8963494

Charge: DUI

A.C. OF .10 OR MORE WITHIN TWO HOURS OF DRIVING
EXTREME DUI

DOB: 06/21/69

DOC: 02/04/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since its assignment on May 8, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings from the Phoenix City Court, and the Memoranda submitted by counsel.

The only issue raised by the Appellant concerns whether the trial court erred in denying Appellant's Motion to Suppress. Appellant filed a Motion to Suppress claiming that the Phoenix Police officers lacked probable cause to seize blood withdrawn from Appellant at the hospital.

In reviewing the trial judge's ruling on a Motion to Dismiss or suppress after an evidentiary hearing, an appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the witnesses.¹ This Court must review those factual findings for an abuse of discretion.² Only when a trial court's factual finding or inference drawn from that finding is not justified or is clearly against reason in the evidence, will an abuse of discretion be established.³

In this case the trial judge found that the Phoenix Police officers had probable cause to believe that Appellant had committed a violation of A.R.S. 28-1381(A). Specifically, the trial judge recited the facts that the officers smelled an odor of alcohol, of a light or moderate nature, upon Appellant's person. And, Appellant was involved in a one-car rollover accident.

Warrantless removal of blood from a person suspected of committing a violation of A.R.S. Section 28-1381(A) is

¹ State v. Gonzalez-Gutierrez, 187 Ariz. 116, 927 P.2d 776 (1996); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1998).

² State v. Rogers, 186 Ariz. 508, 924 P.2d 1027 (1996).

³ State v. Chapple, 135 Ariz. 281, 660 P.2d 1208 (1983); State v. Magner, supra.

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authorized by statute when the following three conditions are met.

- (1) Probable cause exists to believe the accused has violated A.R.S. Section 28-1381(A) or (B);
- (2) Exigent circumstances are present; and
- (3) The blood is drawn for medical purposes by medical personnel.⁴

Appellant does not contest that exigent circumstances are present, nor that blood was drawn for medical purposes by medical personnel. Appellant contends that the Phoenix Police lacked probable cause to believe that Appellant had driven while under the influence of intoxicating liquor or with a blood alcohol content in excess of .10. Probable cause exists where a police officer has reasonably trustworthy information concerning facts and circumstances which are sufficient to lead a reasonable person to believe that a criminal offense is being, or has been, committed, and that the person to be arrested is the person who is committing or did commit the crime.⁵ The precise issue is, then, whether the trial court's findings of an automobile accident (involving only one car) and the light or moderate smell of alcohol from Appellant's person are sufficient to establish probable cause. The trial judge stated that even a "light" smell of alcohol would be sufficient cause to lead a reasonable person to believe that the offense of Driving While Under the Influence may have been committed. This Court concurs completely with the trial court's conclusion. Specifically, this Court finds that the trial judge did not err in denying Appellant's Motion to Suppress, and specifically finding that the Phoenix Police officers had probable cause to believe that Appellant had committed a violation of A.R.S. Section 28-1381(A) or (B).

⁴ A.R.S. Section 28-1388(E).

⁵ State v. Superior Court (Blake, Real Party in Interest), 149 Ariz. 269, 718 P.2d 171 (1986).

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IT IS THEREFORE ORDERED affirming the trial court's denial of Appellant's Motion to Suppress.

IT IS FURTHER ORDERED affirming the judgments of guilt and sentences imposed by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.